



04-03-03

APR 03/24

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Patent  
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Trademark LawAPR 03  
#11903  
H/11/03

April 1, 2003

Director of Technology Center 3600  
Commissioner for Patents  
Washington, D.C. 20231RECEIVED  
APR 08 2003  
GROUP 3600Attn: Art Unit 3621  
Patent Examiner Pierre Eddy Elisca

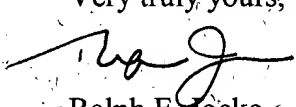
Re: **Application Serial No.:** 09/193,565  
**Confirmation No.:** 2182  
**Applicants:** Jay Paul Drummond, et al.  
**Title:** Automated Banking Machine and System  
**Docket No.:** D-1077+2

Sir:

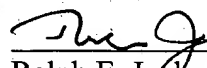
Please find enclosed Petitions pursuant to 37 C.F.R. § 1.181 requesting clarification of the record and withdrawal of a premature final rejection, respectively, for filing in the application.

No fee is deemed required. However, the Commissioner is authorized to charge any necessary fee associated with the filing of the Petitions, and any other fee due, to Deposit Account 09-0428.

Very truly yours, \_\_\_\_\_

  
Ralph E. Jocke  
Reg. No. 31,029CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Director of Technology Center 3600, Commissioner for Patents, Washington, D.C. 20231 this 1st day of April 2003.

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D-1077+2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

|                                  |   |                    |
|----------------------------------|---|--------------------|
| In re Application of:            | ) |                    |
| <b>Jay Paul Drummond, et al.</b> | ) |                    |
|                                  | ) |                    |
| Serial No.: <b>09/193,565</b>    | ) | Art Unit 3621      |
|                                  | ) |                    |
| Confirm. No.: <b>2182</b>        | ) |                    |
|                                  | ) |                    |
| Filed: <b>November 17, 1998</b>  | ) | Patent Examiner    |
|                                  | ) | Pierre Eddy Elisca |
| For: <b>Automated Banking</b>    | ) |                    |
| <b>Machine and System</b>        | ) |                    |

Director of Technology Center 3600  
Commissioner for Patents  
Washington, D.C. 20231

Sir:

**RECEIVED**  
APR 08 2003  
**GROUP 3600**

Kindly enter the following petitions, which are being submitted within two months of the

Office Action dated February 25, 2003:

## **PETITION FOR CLARIFICATION OF THE RECORD**

and

## **PETITION TO WITHDRAWAL PREMATURE FINAL REJECTION**

### **Overview of some dates and papers associated with this application**

1. 09/19/01 Office Action (Final Rejection)
2. 12/17/01 Notice of Appeal
3. 02/13/02 Appeal Brief
4. 05/07/02 Examiner's Answer
5. 06/07/02 Petition that an Examiner's Answer contains impermissible new rejection
6. 06/10/02 Reply Brief
7. 02/25/03 Office Action (Final Rejection) (hereinafter "Action")

### **The Issues**

1. Prosecution has not been reopened. The Office's own procedures for examination clearly state that in order to enter a new ground of rejection after Appellants' Brief has been filed, the examiner, with supervisory approval, must reopen prosecution. Note MPEP § 1208.01 and 1208.02. However, where does the Action state that prosecution has been reopened? Nor is there any evidence of record of supervisory approval for reopening prosecution. Thus, Appellants' Appeal Brief remains active and pending.
2. The finality of the rejection in the Action is premature. Please clarify how Appellants necessitated a new ground of rejection, as alleged in the Action. How could Appellants' petition

filed June 7, 2002 or Appellants' Reply Brief filed June 7, 2002 have necessitated a new ground of rejection? MPEP § 706.07(a). Furthermore, because of the finality of the rejection in the Action, Applicants have been denied an opportunity in accordance with 37 C.F.R. § 1.111 to properly rebut an attempted new ground of rejection. Also, because the finality of the rejection in the Action is premature, prosecution could not have been reopened. That is, the Action is void, and Appellants' Appeal Brief remains active and pending.

3. The Action (paragraph number 1) indicates that Appellants filed a petition "on 06/17/2002 asking for Supervisor Review of the Examiner's final rejection mailed 09/018/02." This is not correct. Appellants' petition dated June 7, 2002 was directed to an Examiner's Answer containing an impermissible new ground of rejection. Appellants question whether the examiner has the authority to decide the petition regarding the Examiner's Answer (which remains pending). Nor has any evidence of record been provided that the examiner was granted authority to decide the petition.

4. Appellants request that the Office Action dated February 25, 2003 be withdrawn due to the attempted premature final rejection therein. Since an Appeal Brief, an Examiner's Answer, and a Reply Brief all remain pending, and prosecution has not been reopened, Appellants further request that this application be forwarded to the Board of Patent Appeals and Interferences for decision on the appeal.

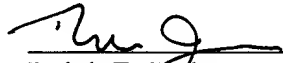
If necessary, then reconsideration is requested

If a request for reconsideration is first required, then Appellants respectfully request reconsideration.

**Conclusion**

Appellants' petition should be granted for the reasons presented herein. The undersigned will be happy to discuss any aspect of the Application by telephone at the Office's convenience.

Respectfully submitted,



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